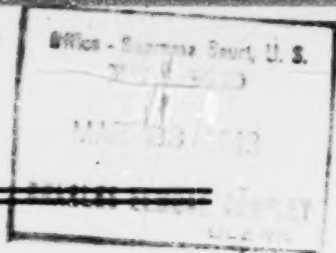


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**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1942

No. 849

**GREAT LAKES DREDGE & DOCK COMPANY,
ET AL.,**

Petitioners,

versus

**PHILIP J. CHARLET, ADMINISTRATOR, DIVISION OF
EMPLOYMENT SECURITY, LOUISIANA DEPART-
MENT OF LABOR, (C. C. HUFFMAN, Adminis-
trator, etc., substituted in the place and stead
of Philip J. Charlet).**

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.**

✓ **R. EMMETT KERRIGAN,
✓ JAMES J. MORRISON,
Attorneys for Petitioners.**

**DEUTSCH, KERRIGAN & STILES,
RYAN, CONDON & LIVINGSTON,
Of Counsel.**

INDEX

	Page
JURISDICTION	2
PRELIMINARY STATEMENT	2
QUESTIONS PRESENTED	8
REASONS RELIED UPON FOR ALLOWANCE OF WRIT	9
APPENDIX A	19
ACT 164 OF 1938	19
Section 1—Declaration of State Public Policy	19
Section 6—Contributions	19
Section 10—Administration	24
Section 15—Penalties	28
Section 18—Definitions	30
APPENDIX B	30
ACT 11 OF 1940	30
Section 6—Contributions	30
Section 15—Penalties	32

TABLE OF AUTHORITIES

Cases

	Page
<i>Bailey vs. Drexel Furniture Co.</i> , 259 U. S. 20 (1922)	5
<i>Benglase Sand & Gravel Co., In re</i> , 76 F. 2d 593 (C. C. A. 7-1935) 595	7
<i>Buckstaff Bath House Co. vs. McKinley</i> , 308 U. S. 358 (1939)	2, 3, 9, 16, 17
<i>Butler vs. Boston & S. S. Co.</i> , 130 U. S. 527 (1889)	12
<i>Carmichael vs. Southern Coal & Coke Co.</i> , 301 U. S. 485 (1937)	2, 3, 9
<i>Claim of Cassaretakis</i> , 44 N. E. (2d) 391 (N. Y.— 1942)	17
<i>Cooley vs. Board of Wardens</i> , 12 How. 299 (1851)	14
<i>Cooney vs. Mountain States Tel. & Tel. Co.</i> , 294 U. S. 384 (1935)	10, 15
<i>Cornell Steamboat Co. vs. Sohmer</i> , 235 U. S. 549 (1915)	15
<i>Ellis vs. United States</i> , 206 U. S. 246 (1907)	8
<i>Gayle vs. Union Bag & Paper Corp.</i> , 116 F. (2d) 27 (C. C. A. 5-1940), cert. den., 313 U. S. 559 (1941)	8
<i>Gibbons vs. Ogden</i> , 9 Wheat. 1 (1824)	12, 14
<i>Great Lakes Dredge & Dock Co., et al. vs. Philip J. Charlet, Administrator, Division of Employment Security, Louisiana Department of Labor</i> , 43 F. Supp. 981 (1924)	2
<i>Hall vs. deCuir</i> , 95 U. S. 485 (1878)	12, 14
<i>Harmon vs. City of Chicago</i> , 147 U. S. 396 (1893)	10, 14
<i>Helson vs. Kentucky</i> , 279 U. S. 245 (1929)	10, 15
<i>Hill vs. Wallace</i> , 259 U. S. 44 (1922)	5, 18
<i>Huse vs. Glover</i> , 119 U. S. 543 (1886)	15
<i>International Elevating Co. vs. Frieda S. Miller, In- dustrial Commissioner</i> , October Term, No. 723	2, 9
<i>Just vs. Chambers</i> , 312 U. S. 383 (1941)	13

TABLE OF AUTHORITIES

iii

	Page
<i>Kelly vs. Washington</i> , 302 U. S. 1 (1937)	12, 14
<i>Kibadeaux vs. Standard Dredging Co.</i> , 81 F. (2d) 670 (C. C. A. 5-1936), cert. den., 299 U. S. 549 (1937)	8
<i>Knickerbocker Ice Co. vs. Stewart</i> , 253 U. S. 149 (1920)	12, 13
<i>Lake Tankers Corporation vs. Frieda S. Miller, Indus- trial Commissioner</i> , October Term, 1942, No. 813	2, 9
<i>Linder vs. United States</i> , 268 U. S. 5 (1925)	18
<i>Lottawanna, The</i> , 21 Wall. 558 (1874)	12, 13
<i>Matton Steamboat Co. Inc., et al. vs. Frieda S. Miller, Industrial Commissioner</i> , October Term, 1942, No. 783	2, 9
<i>M'Culloch vs. Maryland</i> , 4 Wheat. 316 (1819)	14
<i>Moran vs. City of New Orleans</i> , 112 U. S. 69 (1884)	10, 14
<i>New York, N. H. & H. R. vs. New York</i> , 165 U. S. 628 (1899)	13
<i>Old Dominion S. S. Co. vs. Virginia</i> , 198 U. S. 299 (1905)	15
<i>Perkins vs. Pennsylvania</i> , 314 U. S. 586, 62 S. Ct. 484, 86 L. Ed., affirming 342 Pa. 529, 21 A (2d) 45	17
<i>Red Cross Line vs. Atlantic Fruit Co.</i> , 264 U. S. 109 (1924)	13
<i>Sands vs. Manistee River Impr. Co.</i> , 123 U. S. 288 (1887)	15
<i>Saylor vs. Taylor</i> , 77 Fed. 476 (C. C. A. 4-1896)	8
<i>Southern Pacific Co. vs. Jensen</i> , 244 U. S. 205 (1917)	12
<i>Shore Fishery, Inc. vs. Board of Review</i> , 127 N. J. L. 87, 21 Atl. (2d) 634 (1941)	18
<i>Standard Dredging Corp. vs. Frieda S. Miller, Indus- trial Commissioner</i> , October Term, 1942, No. 722	2, 9
<i>Stewart Machine Co. vs. Davis</i> , 301 U. S. 548 (1937)	2, 3, 9
<i>United States vs. Butler</i> , 297 U. S. 1 (1936)	5, 18
<i>Washington vs. Dawson</i> , 264 U. S. 219 (1924)	10, 12, 14
<i>Western Fuel Co. vs. Garcia</i> , 257 U. S. 233 (1921)	13
<i>Williams vs. Standard Oil Co.</i> , 278 U. S. 235 (1928) ..	18

TABLE OF AUTHORITIES

Statutes	Page
Constitution of the United States, Art. I, Sec. 8, Clause 18	2, 13
Constitution of the United States, Art. III, Sec. 2	2, 13
24 U. S. C. A. 2	12
24 U. S. C. A. 26	12
24 U. S. C. A. 26 (a)	12
26 U. S. C. A. 1601	16
26 U. S. C. A. 1606 (a) (Internal Revenue Code)	17
28 U. S. C. A. 344	3
28 U. S. C. A. 347	3
42 U. S. C. A. 6	12
42 U. S. C. A. 409 (b) (A)	12
42 U. S. C. A. 409 (b) (B)	12
42 U. S. C. A. 502	3, 11
42 U. S. C. A. 503	3, 11
42 U. S. C. A. 1106	16
42 U. S. C. A. 1107 (c) (3)	6, 16
45 U. S. C. A. 363 (a)	16
46 U. S. C. A., Chapter 11	12
46 U. S. C. A., Chapter 18	12
46 U. S. C. A. 594	12
46 U. S. C. A. 596	12
46 U. S. C. A. 597	12
46 U. S. C. A. 599	12
46 U. S. C. A. 603	12
46 U. S. C. A. 604	12
46 U. S. C. A. 642	12
56 U. S. C. A. 163	7
R. S. 4321	7
H. R. 5446	17
H. R. 9798	17

TABLE OF AUTHORITIES

v

Louisiana Statutes:

	Page
Act 97 of 1936	2
Act 97 of 1936, Sec. 18 (g) (7)	6
Act 164 of 1938	19
Act 164 of 1938, Sec. 1	4, 11
Act 164 of 1938, Sec. 6	11
Act 164 of 1938, Sec. 6 (b)	3
Act 164 of 1938, Sec. 6 (c)	5
Act 164 of 1938, Sec. 6 (d)	4
Act 164 of 1938, Sec. 6 (d) (1)	12
Act 164 of 1938, Sec. 10	4, 11
Act 164 of 1938, Sec. 10 (a)	4
Act 164 of 1938, Sec. 10 (f)	4
Act 164 of 1938, Sec. 10 (g)	4
Act 164 of 1938, Sec. 10 (h)	4
Act 164 of 1938, Sec. 10 (i)	4
Act 164 of 1938, Sec. 18 (g) (6) (C)	6
Act 164 of 1938, Sec. 13	4
Act 10 of 1940	2
Act 11 of 1940	2, 5, 30
Act 11 of 1940, Sec. 6 (c)	5
Act 133 of 1942	4
Pennsylvania Unemployment Insurance Law, 43 P. S.	
Sec. 751, <i>et seq.</i>	17

Miscellaneous

Convention No. 55, International Labor Conference, 21st Session, Geneva, 1936, (reported 1938 A. M. C., Vol. 2, p. 1297)	11
Convention No. 56, International Labor Conference, 21st Session, Geneva, 1936, (reported 1938 A. M. C., Vol. 2, p. 1322)	11

TABLE OF AUTHORITIES

	Page
Document No. 110, p. 16, 76th Cong., 1st Session, House of Representatives.....	6, 16
Hearings before House Committee on the Merchant Marine and Fisheries, 77th Cong., 1st Sess. on H. R. 5446—Report, Federal Security Agency, p. 198	6, 16
Hearings on Social Security Act Amendments, 1939, House Committee on Ways & Means (76th Cong., 1st Sess.) pp. 12, 65, 1412, <i>seq.</i> , 1423-1424, 1426, 1428, 1450 <i>seq.</i> , 2325, 2327, 2471, 2488, 2490 <i>seq.</i>	17
H. R. 5446, 77th Cong., 1st Sess.	17
H. R. 9798, 76th Cong., 3rd Sess.	17
Report to Governor, Louisiana Unemployment Com- pensation Commission, "Experience Rating in Louisiana", April, 1942	5
Report to the President of the Committee on Economic Security (Govt. Printing Office, 1935)	6
Report of the Social Security Board to the President, transmitted by him to Congress, January 16, 1939, Hearings Relative to the Social Security Act Amendments of 1939 before the Committee on Ways and Means, House of Representatives, 67th Cong., 1st Sess. Vol. 1, p. 12	6
Message of the President, Transmitting the Social Se- curity Bill to Congress, 1935	11
Series No. 8, International Labor Conference, Genoa, 1920, reported, 1938 A. M. C., Vol. 2, p. 1321	11
Unemployment Compensation, What and Why, Social Security Board (1937), pp. 22, 40-44, 50	11

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PHILIP J. CHARLET, ADMINISTRATOR, DIVISION OF
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MENT OF LABOR, (C. C. HUFFMAN, Adminis-
trator, etc., substituted in the place and stead
of Philip J. Charlet).

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

Your petitioners, Great Lakes Dredge & Dock Com-
pany, Jahncke Service, Inc., McWilliams Dredging
Company, Standard Dredging Corporation (New York),
Sternberg Dredging Company, United Dredging Company,
Wilbanks & Pierce, Inc., and W. Horace Williams Com-
pany, Inc., respectfully pray that a writ of certiorari be

issued to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit, affirming the judgment of the United States District Court for the Eastern District of Louisiana, dismissing plaintiffs' (petitioners') action.¹

JURISDICTION

The judgment of the Circuit Court of Appeals sought to be reviewed was entered on February 11, 1943 (R. 55). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. 347).

PRELIMINARY STATEMENT

This case challenges the validity of the Louisiana Unemployment Compensation Act² under Article 3, Section 2, and Article 1, Section 8, Clause 18, of the United States Constitution. This case and companion cases presently on appeal to this Court from the Court of Appeals for the State of New York³ are the first tests of the validity of the application of state unemployment compensation legislation to maritime employment to reach this Court.⁴ Peti-

¹The opinion of the District Court dismissing the action (R. 27) is reported in 43 F. Supp. 981 (1942). The opinion of the Circuit Court of Appeals (R. 55) is not yet reported.

²Act 97 of 1936, as amended by Act 164 of 1938, and Acts 10 and 11 of 1940. See Appendix.

³*Lake Tankers Corporation v. Frieda S. Miller, Industrial Commissioner*, October Term, 1942, No. 813; *Matton Steamboat Co., Inc., et al. v. Same*, No. 783. Also see *Standard Dredging Corporation v. Same*, No. 722; *International Elevating Company v. Same*, 723.

⁴While this Court has upheld the constitutionality of state unemployment compensation legislation generally with respect to employment fields within the scope of state police power (*Stewart Machine Co. v. Davis*, 301 U. S. 548 (1937); *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 485 (1937)), or within which the Congress has specifically granted the states authority so to affect employment (*Buckstaff Bath House Co. v. McKinley*, 308 U. S. 358 (1939)), this Court has never ruled on the applicability of such state legislation to a field of employment within the plenary power of Congress wherein the Congress has not authorized state interference.

tioners request that a writ be granted herein and that these cases be consolidated for argument so that the Court may have a full and complete presentation of the substantial constitutional questions involved.⁵

This action is a declaratory judgment proceeding to determine the validity of the Louisiana Act, as amended in 1938, in its application to petitioners' maritime employment. Petitioners are engaged from time to time in the operation and navigation, on the navigable waters of the United States within the State of Louisiana, of dredges and appurtenant vessels documented under the laws of the United States and licensed to engage in the coasting trade.⁶ In the course of these operations petitioners must employ officers and crews to operate and navigate their vessels. It is this employment which the State of Louisiana claims the power to regulate and to tax through the provisions of the Act in question.

The Louisiana Act is one of the state administered adjuncts to the Social Security plan.⁷ It creates an unemployment compensation fund by the imposition of an excise tax⁸ on the privilege of employment in Louisiana. Since 1938 the rate of the employer tax has been 2.7% of the gross payroll.⁹ For the period 1936-June, 1940, a tax at the rate of 0.5% was assessed against employees on wages earned, which the employer was responsible for col-

⁵The other cases, having been decided by a state court, were brought here by appeal as a matter of right. 28 U. S. C. A. 344. The instant case was decided by a federal court and therefore petitioners must rely on certiorari to bring it to this Court. 28 U. S. C. A. 347.

⁶Facts have been either admitted or stipulated (R. 17, *seq.*, 29, 56-57).

⁷42 U. S. C. A. 502, 503. *Cf.* Buckstaff Bath House Co. v. McKinley, 308, U. S. 358 (1939).

⁸*Stewart Machine Co. v. Davis*, *loc. cit. supra* note 4; *Carmichael v. Southern Coal & Coke Co.*, *loc. cit. supra* note 4.

⁹Act 164 of 1938, § 6(b). Appendix, p. 20.

lecting and withholding "in trust," and paying in any event.¹⁰ The proceeds of this fund are distributed as benefits to unemployed persons in accordance with provisions of the Act not here relevant.

The act provides in its "Declaration of State Public Policy"¹¹ that among its purposes is "encouraging employers to provide more stable employment." The regulatory features of the Act, most of which have nothing to do with the enforcement or collection of the tax,¹² but which are designed to regulate employment and to determine eligibility for benefits under the statute, include a comprehensive system of controls, based upon employment reports required to be submitted by the employer,¹³ investigation of employment records and practices,¹⁴ provisions for keeping such records in accordance with regulations prescribed by the Commissioner,¹⁵ a grant of broad discretionary and regulatory powers to the Commissioner with respect to "employment stabilization,"¹⁶ provisions for hearings by the Commissioners, and by a Board of Review,¹⁷ with concomitant subpoena power of the books, records, papers and documents of employers,¹⁸ and a grant of power to the Commissioner or the Board to require any reports either "deems necessary for the effective administration of this Act."¹⁹

¹⁰*Id.*, § 6(d).

¹¹*Id.*, § 1, Appendix, p. 19.

¹²Indeed, the tax collection and enforcement provisions of the Acts are restricted exclusively to Section 13 thereof. See also La. Act 133 of 1942.

¹³Act 164 of 1938, §§ 10 (a), (g), Appendix, pp. 24, 25.

¹⁴*Id.*

¹⁵*Id.*

¹⁶*Id.*, § 10 (f).

¹⁷*Id.*, § 10 (g), (h).

¹⁸*Id.*, § 10 (i).

¹⁹*Id.*, § 10 (g).

Under the provisions of the 1938 act, petitioners were subjected to even more effective regulation by the operation of a "Merit Rating System" plan.²⁰ Under this plan, petitioners were "encouraged" to provide more stable employment by a fluctuating tax rate, to become effective July 1, 1941, ranging between 1% and 3.6% of their gross payrolls, assessed against them on the basis of the Commissioner's classification of "employers, industries, and/or occupations with respect to the unemployment hazard in each."²¹ . . . He may apply such form of classification or rating system which in his judgment is best calculated to rate most equitably the employment risk for each employer or group of employers and to encourage the stabilization of employment."²² The regulatory nature of the Act thus seems to be beyond dispute.²³

²⁰While the present Louisiana unemployment compensation statute (Act 11 of 1940) does not contain a merit system feature, the prior statute, which applies to a portion of the period involved in this litigation, does contain such system, and shows clearly the manner in which the unemployment compensation tax is to continue to operate as an additional sanction for the regulation of employment in Louisiana. Indeed, the present statute contains the following provision: (La. Act 11 of 1940, § 6 (c)): "Study of Experience Rating. The Administrator shall investigate and study the operation of this Act and actual experience hereunder with a view to determining the feasibility of establishing a rating system which would equitably rate the unemployment risk and fix the contribution to the fund of each employer, and which would encourage the stabilization of employment. The Administrator shall submit his report and recommendations to the Governor and the Legislature." This provision clearly shows the State's intention of continuing to use the tax as an essential of the regulatory system, and that it is merely a matter of accumulating sufficient experience to place the regulation into operative effect. In the meantime, the very accumulation of the experience is tantamount to the application of the tax sanction envisioned by the Act, because the rate subsequently to be established by the legislature will reflect the "experience" of each employer or group of employers being complied today. See: Report to Governor, Louisiana Unemployment Compensation Commission, "Experience Rating in Louisiana," April, 1942.

²¹Act 164 of 1938, § 6 (c), Appendix, p. 20.

²²*Id.*

²³Compare *Bailey v. Drexel Furniture Co.*, 259 U. S. 20 (1922); *Hill v. Wallace*, 259 U. S. 44 (1922); *United States v. Butler*, 297 U. S. 1 (1936).

Prior to 1938, the Louisiana Act, in keeping with the provisions of the Social Security Act,²⁴ and of similar acts in the other States of the Union, and with the policy expressed both by the President's Committee on Economic Security²⁵ and by the Social Security Board,²⁶ exempted from the statutory definition of the term "Employment": "service performed as an officer or member of the crew of a vessel on the navigable waters of the United States."²⁷ However, in 1938, this definition was amended, contrary to the uniform policy above referred to, so as to exclude from this definition such service only when the vessels are "customarily operating between ports of this State and ports outside this State."²⁸

All of petitioners' dredges and appurtenant craft are enrolled and documented under the laws of the United States, and licensed by the United States Department of Commerce, Bureau of Navigation, to engage in the coast-

²⁴42 U. S. C. A., 1107 (c) (3).

²⁵Report to the President of the Committee on Economic Security (Govt. Printing Office, 1935).

²⁶See Report of the Social Security Board to the President transmitted by him to Congress January 16, 1939, Hearings Relative to the Social Security Act Amendments of 1939 before the Committee on Ways and Means, House of Representatives, 67th Cong. 1st Sess. Vol. 1, p. 12. "Under the Constitution it is impossible to confer upon the states jurisdiction over maritime employment to the extent necessary to meet the needs of unemployment compensation. Therefore, in order to afford such protection to seamen, it would be necessary to pass a Federal act." (See also Document No. 110, p. 16, 76 Cong., 1st Session, House of Representatives. See also Hearings before House Committee on the Merchant Marine and Fisheries, 77th Cong., 1st Sess., on H. R. 5446—Report, Federal Security Agency, p. 198.

²⁷Act 97 of 1936, § 18 (g) (7).

²⁸Act 164 of 1938, Sec. 18 (g) (6) (C), Appendix, p. 30.

ing trade (R. 17, seq., 21).²⁹ These vessels are engaged in deepening, widening, improving, extending and clearing navigable channels and other navigable waters, creating fill, and other similar operations. The vessels operate in various states and territories and in foreign countries. When they move on voyages from one scene of operations to another, whether within a state, to another state, or over the high seas to a foreign country, each vessel transports her officers and crew, her machinery, equipment, fuel and supplies. As expressly stipulated, the employees involved "are employed in the navigation and operation" of petitioners' vessels (R. 17).

In the course of their operations, petitioners' vessels have occasion, from time to time, to operate under their federal licenses on the navigable waters of the United States within the State of Louisiana.³⁰ Frequently their operations in the rivers and coastal waters bounding Louisiana are such that the vessels cross and recross state lines, and often, when operating on such boundaries, it is difficult, if not impossible, to tell with any accuracy in what state the dredges are operating, or are operating most frequently. However, the vessels do not customarily operate between ports within and ports outside Louisiana, and hence, the amended statute directly affects plaintiffs' maritime employment by seeking to regulate and tax it.

²⁹See Original Exhibits "A" to "N", both inclusive, made a part of the record in this application. The Certificate of Enrollment and License is in statutory form (R. S. 4321, 46 U. S. C. A. 163), and provides that "License is hereby granted for the said vessel to be employed in the coasting trade," and "that this license shall not be used for any other vessel, or for any other employment than is herein specified." When engaged in foreign trade, the documentation is changed to registration for that trade. See: *In re Benglase Sand & Gravel Co.*, 76 F2d 593, (CCA 7-1935) 595.

³⁰Paragraph 4 of petition (R. 5); admission thereof in answer (R. 14). Paragraph IV and V of Stipulation (R. 18, 19).

The District Court (R. 34) and the Circuit Court of Appeals (R. 57) assumed without deciding that the persons employed aboard petitioners' vessels are officers and members of the crew of vessels on the navigable waters of the United States and within admiralty jurisdiction. It seems quite clear that both courts were correct in making this assumption.³¹

QUESTIONS PRESENTED

The broad question presented is whether the Louisiana Act, as applied to maritime employment aboard petitioners' documented vessels, while operating on the navigable waters of the United States within the State of Louisiana, under their Federal licenses to engage in the coasting trade, is unconstitutional as violative of Section 2 of Article 3 and Clause 18 of Section 8 of Article 1 of the Constitution of the United States. Subsidiary questions may be stated as follows:

1. Whether the Louisiana Act, as applied to petitioners' maritime employment, is invalid as being a tax and a burden on an incident essential to the exercise of petitioners' federal licenses to engage in the coasting trade.³²

2. Whether the Act, as a comprehensive system of employment regulation, of which the tax feature is a part, when applied to petitioners' maritime employment, violates the uniformity required by the Constitution in things mari-

³¹*Ellis v. United States*, 206 U. S. 246 (1907); *Kibadeaux v. Standard Dredging Co.*, 81 F. 2d 670 (CCA 5-1936), cert. den. 299 U. S. 549 (1937); *Saylor v. Taylor*, 77 Fed. 476 (C. C. A. 4th, 1896); *Gayle v. Union Bag & Paper Corp.*, 116 F. 2d 27, (CCA 5-1940), cert. den. 313 U. S. 559 (1941).

³²Although this question was presented to the lower court, it was not passed on.

time, and conflicts with federal regulation thereof already preempting the field

3. Whether, in the exercise of its plenary power, Congress expressly or by necessary implication has excluded state unemployment compensation legislation and taxation with regard to maritime employment.

4. Whether the tax is a step in an unauthorized plan, beyond state power, and hence unconstitutional.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

This case presents questions of first importance with respect to the constitutionality of state legislation supplementary to the Social Security Act as applied to maritime employment never heretofore considered by this Court.³³ The issues not only vitally affect the administration of these aspects of the Social Security program, but vitally affect a substantial portion of the maritime industry as well.

As pointed out above,³⁴ other cases involving certain aspects of the questions raised in this case are presently pending before this Court on appeal, and it is requested that this case be argued with those now pending, so that a full and complete presentation of the matter may be made. A decision of these questions by this Court is of pressing importance, not only to the parties involved, but to the entire maritime industry, and to all of the states in determining whether they may apply their compensation laws to maritime affairs.

³³See *supra*, note 4.

³⁴See *supra*, note 3.

Aside from the novelty and importance of the issues presented, the decision below should be reviewed for the additional reason that it conflicts with applicable decisions of this Court.

(1)

To the extent that the decision below holds the Act valid as a state excise, privilege or license tax on maritime employment (i.e., on the privilege of employing, or of being employed as, officers and members of the crews of petitioners' federally enrolled and licensed vessels), it is not in accord with the decisions of this Court in the following cases, holding state tax and licensing statutes unconstitutional when applied to maritime activities, or when burdening the exercise of a federal right, privilege or franchise:

Moran v. City of New Orleans, 112 U. S. 69 (1884).

Harmon v. City of Chicago, 147 U. S. 396 (1893).

Washington v. Dawson, 264 U. S. 219 (1924).

Compare:

Helson v. Kentucky, 279 U. S. 245 (1929).

Cooney v. Mountain States Tel. & Tel. Co., 294 U. S. 384 (1935).

Certainly, in licensing petitioners' vessels to engage in the coasting trade, which carries with it the privilege of navigating the inland waters of the United States, the federal government did not contemplate that the vessels would operate in such waters without officers and crews, or that the right properly to man them in the exercise of

such federal licenses should be subject to state taxation. It would seem clear that such licenses include the privilege of employing the necessary officers and crew to man the licensed vessels without state interference or taxation.

(2)

In so far as the Court below held that the Act was not a regulatory measure, it ignored the plain regulatory provisions of Act,³⁵ its unambiguous "Declaration of State Public Policy",³⁶ and its clear purpose so as to regulate employment as to reduce unemployment.³⁷ Indeed, the district court recognized in its conclusions of law (R. 46) that the Act was adopted by the state "in the exercise of its police power", and this conclusion was approved by the Circuit Court of Appeals (R. 57). It seems quite clear that the Act is inconsistent or conflicts in many particulars with treaties and mutilateral conventions ratified or under consideration by the Senate,³⁸ with federal statutes regulating

³⁵Cf. La. Act 164 of 1938, §§ 6, 10, Appendix, pp. 19, 24.

³⁶*Id.*, § 1, Appendix, p. 19.

³⁷"An unemployment compensation system should be constructed in such a way as to afford every practicable aid and incentive toward the larger purpose of employment stabilization." Message of the President Transmitting the Social Security Bill to Congress, 1935. See also *Unemployment Compensation, What and Why*, Social Security Board (1937), pp. 22, 40-44, 50. State unemployment compensation acts must, of course, conform to the standards established by the Social Security Act in order to obtain approval of the Social Security Board for grants-in-aid. See 42 U. S. C. A. 502, 503.

³⁸The Senate has given its advice and approval to the Treaty Covering the Liability of Shipowners in Case of Sickness, Injury or Death of Seamen, containing elaborate provisions for the care and compensation of seamen unemployed for such reasons. (See Convention No. 55, International Labor Conference, 21st Session, Geneva, 1936, reported, 1938 A. M. C., Vol. 2, p. 1297). The Senate is still considering the Draft Convention Concerning Sickness Insurance for Seamen (see Convention No. 56, International Labor Conference, 21st Session, Geneva, 1936, reported, 1938 A. M. C., Vol. 2, p. 1322), and will no doubt be called upon to consider the Convention Concerning Unemployment Indemnity in Consequence of Shipwreck. (Series No. 8, International Labor Conference, Genoa, 1920, reported, 1938 A. M. C., Vol. 2, p. 1321).

maritime employment,³⁹ and that it works material prejudice to the characteristic features of the maritime law and interferes with its proper harmony and uniformity in its interstate and international relations.

Thus, the decision below plainly conflicts with the principle announced by this Court in *Kelly v. Washington*⁴⁰ that:

"If . . . the state . . . attempts to impose particular standards as to . . . operation, which . . . pass beyond what is plainly essential to safety and seaworthiness, the state will encounter the principle that such requirements, if imposed at all, must be through the action of Congress which can establish a uniform rule."

Gibbons v. Ogden, 9 Wheat. 1 (1824).

The Lottawanna, 21 Wall. 558 (1874).

Hall v. deCuir, 95 U. S. 485 (1878).

Butler v. Boston & S. SS Co., 130 U. S. 527 (1889).

Southern Pac. Co. v. Jensen, 244 U. S. 205 (1917).

Knickerbocker Ice Co. v. Stewart, 253 U. S. 149 (1920).

Washington v. Dawson, 264 U. S. 219 (1924).

A clear distinction has been and must be drawn between the extent of the powers of Congress, and of the States, under the Commerce clause of the Constitution on

³⁹See the host of federal laws regulative of maritime employment contained in 46 U. S. C. A. Chapters 11, 18. See also 24 U. S. C. A. 2, 26, 26 (a); 42 U. S. C. A. 6, 409 (b) (A), (B).

As an example, the provisions of the Louisiana Act (§ 6 (d) (1) Appendix, p. 23) requiring the employer to withhold 0.5% of the employees' wages is in direct conflict with the federal statutes providing that seamen's wages shall not "be subject to attachment or arrestment." 46 U. S. C. A. 601. See also 46 U. S. C. A. 594, 596, 597, 599, 603, 604, 642.

⁴⁰302 U. S. 1 (1937) at p. 15.

one hand, and under the Admiralty clause, on the other. With respect to commerce, the constitutional grant to Congress is of a *regulative* power, restricted to its interstate aspect, plenary when exercised, but, except in matters of national concern, shared with the states in the absence of congressional legislation;⁴¹ while the Admiralty Clause grants both to the judiciary,⁴² and to Congress,⁴³ exclusive authority over "all cases of admiralty and maritime jurisdiction." ⁴⁴ The reception into admiralty of local laws and customs not hostile to the characteristic features of maritime law⁴⁵ is entirely consistent with this doctrine of uniformity. As observed by this Court recently in *Just v. Chambers*:⁴⁶

" . . . the maritime law was not a complete and perfect system and . . . in all maritime countries there is a considerable body of municipal law that underlies the maritime law as the basis of its administration."

Every instance in which local law has been received into the Admiralty, however, has been with respect to the recognition of substantive rights of individuals, such as those with respect to maritime torts,⁴⁷ liens,⁴⁸ survivorship,⁴⁹

⁴¹See *New York, N. H. & H. R. v. New York*, 165 U. S. 628 (1899).

⁴²U. S. Constitution, Art. III, Sec. 2.

⁴³U. S. Constitution, Art. I, Sec. 8, Clause 18.

⁴⁴See *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149 (1920), at p. 161: "The distinction between the indicated situation created by the Constitution relative to maritime affairs and the one resulting from the mere grant of power to regulate commerce without more, should not be forgotten." (Emphasis supplied).

⁴⁵*Western Fuel Co. v. Garcia*, 257 U. S. 233 (1921); *The Lottawanna*, 21 Wall. 558 (1874).

⁴⁶312 U. S. 383 (1941) at p. 390.

⁴⁷*Western Fuel Co. v. Garcia*, *supra* note 45.

⁴⁸*The Lottawanna*, *supra* note 45.

⁴⁹*Just v. Chambers*, *supra* note 46; and see *Red Cross Line v. Atlantic Fruit Co.*, 261 U. S. 109 (1924).

and the like. Uniformly, where the state has attempted to go beyond, and to impose regulations, either by tax,⁵⁰ or otherwise,⁵¹ this Court has held such state action to be unconstitutional,⁵² except with respect to historically excluded pilotage⁵³ and patent unseaworthiness not within the protection of the admiralty jurisdiction.⁵⁴

No question of individual substantive rights of the type received into the maritime law is involved in the instant case. The question here is as to the right of a state to regulate and to tax maritime affairs. The act is a clear invasion of a field reserved exclusively to the Congress under the Constitution. The power to tax is, of course, the power to destroy.⁵⁵

The Court below failed to take into account the distinction pointed out above. The authorities referred to by the Court involving the application of the principles of interstate commerce to corporate franchise taxation afford no basis for a holding under the Admiralty Clause of the

⁵⁰*Moran v. New Orleans*, 112 U. S. 69 (1884); *Harmon v. Chicago*, 147 U. S. 396 (1893); *Washington v. Dawson*, 264 U. S. 219 (1924).

⁵¹*Gibbons v. Ogden*, 9 Wheat. 1 (1824); *Hall v. deCuir*, 95 U. S. 485 (1878).

⁵²*Supra* notes 50 and 51.

⁵³*Cooley v. Board of Wardens*, 12 How. 299 (1851), at p. 315: "... it may be observed, that similar laws have existed ... in the States since the adoption of the federal Constitution; that by the Act of the 7th of August, 1789, 1 Stat. at Large, 54, Congress declared that all pilots ... shall continue to be regulated in conformity with the existing laws of the States, etc., and that this contemporaneous construction of the Constitution since acted on with such uniformity in a matter of much public interest and importance, is entitled to great weight, in determining whether such a law is repugnant to the Constitution ..."

⁵⁴*Kelly v. Washington*, 302 U. S. 1 (1937) at p. 14: "When the state is seeking to prevent the operation of unsafe and unseaworthy vessels in going to and from its ports, it is exercising a protective power akin to that which enables the state to exclude diseased persons, animals, and plants. These are not proper subjects of commerce, and an unsafe and unseaworthy vessel is not a proper instrumentality of commerce."

⁵⁵*M'Culloch v. Maryland*, 4 Wheat. 316 (1819).

Constitution. If any of the interstate commerce decisions are authority in the instant case, it is the line of decisions culminating in *Helson v. Kentucky*,⁵⁶ and *Cooney v. Mountain States Tel & Tel. Co.*,⁵⁷ holding unconstitutional state taxation of instrumentalities, or of indispensable incidents, of interstate commerce, on the ground that state taxation thereof imposes a direct burden on a matter beyond state jurisdiction.

The cases cited by the Court below involving the Admiralty Clause are not in point. *Cornell Steamboat Co. v. Sohmer*,⁵⁸ simply upheld a state corporation franchise tax applied against a corporation of its own creation engaged in navigation.⁵⁹

Huse v. Glover,⁶⁰ and *Sands v. Manistee River Impr. Co.*,⁶¹ merely approve state authorized charges for the use of state constructed maritime facilities and improvements to navigation—situations not present here. In the *Old Dominion* case⁶² the Court, on well-recognized principle, approved a state personal property tax assessed against vessels permanently located within the state. But none of these cases approved the imposition, as is here present, of a state tax on a maritime relationship (i. e., employment of crews) essential to the exercise of a maritime activity duly licensed by Congress.

⁵⁶279 U. S. 245 (1929).

⁵⁷294 U. S. 384 (1935).

⁵⁸235 U. S. 549 (1915).

⁵⁹There the Court specifically pointed out: "... the tax ... is levied upon the corporation for the privilege of carrying on its business in a corporate or organized capacity. ... if the parties ... are dissatisfied with the price exacted by the state for this privilege, they may carry on the business as individuals without paying any charge. In other words, the charge is not upon the navigation of the river, but is upon the doing of business as a corporation of the state within the state."

⁶⁰119 U. S. 543 (1886):

⁶¹123 U. S. 288 (1887).

⁶²*Old Dominion S. S. Co. v. Virginia*, 198 U. S. 299 (1905).

The lower Court also erred in holding that the Act does not trench upon matters of exclusive federal concern, and that Congress has not expressly, or by necessary implication, exempted maritime employment from state unemployment compensation legislation, (R. 57). Briefly, Congress specifically exempted maritime employment from the coverage of the unemployment compensation features of the Social Security Act;⁶³ and while granting to the states by such Act control over other employment fields in which Congress exercised plenary authority,⁶⁴ withheld a grant of authority where maritime employment was concerned.⁶⁵ Moreover, both the President's Committee on Economic Security⁶⁶ and the Social Security Board⁶⁷ recommended that Congress not authorize the states to administer unemployment compensation with respect to maritime affairs, but, to the contrary, that "a separate nationally administered system of unemployment compensation for . . . maritime workers" be established.⁶⁸ The House Committee on Ways and Means carefully considered the whole question of extension of state authority to include maritime employment and concluded not to extend the Social Security Act, but to

⁶³42 U. S. C. A. 1107 (c) (3).

⁶⁴*I. e.*, 1. Interstate commerce (except railroads); 2. Instrumentalities of the United States (except those wholly owned or otherwise exempt); 3. National banks; and 4. Persons employed on land or premises owned, held or possessed by the United States. See 42 U. S. C. A. 1106; 45 U. S. C. A. 362 (a); 26 U. S. C. A. 1601; and see *Buckstaff Bath House Co. v. McKinley*, 308 U. S. 358 (1939).

⁶⁵*Ibid.* There is no similar grant with respect to state control over maritime employment, and indeed the exclusion thereof from the definition of "employment" in the Social Security Act (*supra*, note 63) clearly indicates a congressional intent to withhold such authority from the states.

⁶⁶Report (Govt. Printing Office 1935): "We . . . favor the establishment of a separate *nationally administered* system of unemployment compensation for . . . maritime workers." (Emphasis added).

⁶⁷*Op. cit. supra* note 26.

⁶⁸*Ibid.*, note 66.

refer the matter to the House Committee on the Merchant Marine & Fisheries for consideration and action.⁶⁹ A bill is presently pending before the latter committee,⁷⁰ establishing a system of unemployment compensation for maritime workers, which differs substantially from that sought to be imposed by Louisiana. This legislative history clearly indicates that Congress meant to exclude unemployment compensation legislation for maritime employment from its cooperative venture with the States.⁷¹

The Court below relied upon the badly reasoned opinions of two state courts as authority for its decision (R. 62). The *New York* case⁷² is presently on appeal to this Court. In both of those cases, as in the instant case, the courts confused the principles of interstate commerce with those of the admiralty. Moreover, the New York court interpreted the provision of the Federal Social Security Act permitting extension of state unemployment compensation legislation to interstate commerce to authorize like extension to admiralty matters,⁷³ an entirely inadmissible extension of the provision, in no way warranted by a history of the Act, as pointed out above.

⁶⁹See Hearings on Social Security Act Amendments, 1939, House Committee on Ways and Means (76th Cong., 1st Sess.) pp. 12, 65, 1412 seq., 1423-1424, 1426, 1428, 1450 seq., 2325, 2327, 2471, 2488, 2490 seq.

⁷⁰H. R. 9798 (76th Cong., 3rd Sess.) and H. R. 5446 (77th Cong., 1st Sess.). See also Hearings on both bills.

⁷¹*Buckstaff Bath House v. McKinley*, 308 U. S. 358 (1939).

⁷²*Claim of Cassaretakis*, 44 N. E. (2d) 391 (N. Y.-1942).

⁷³The Court said (44 N. E. (2d) at p. 395): "... by section 1606 (a) of the Federal Tax Act, 26 U. S. C. A. Int. Rev. Code, Sec. 1606 (a), the Congress has declared that state unemployment insurance laws may be applied to interstate commerce. And in *Perkins v. Pennsylvania*, 314 U. S. 586, 62 S. Ct. 484, 86 L. Ed., affirming 342 Pa. 529, 21 A. 2d 45, the Supreme Court has held that there is no constitutional obstacle under the commerce clause to the application of the Pennsylvania Unemployment Insurance Law, 43 P. S. Sec. 751 et seq., to those employed in interstate commerce. This would seem to be a conclusive determination that unemployment among those engaged in interstate commerce in general is a matter of local concern as to which no uniform national legislation is needed and in which field, therefore, the states may constitutionally legislate."

The New Jersey case involved employment exclusively within the territorial limits of New Jersey, in small surf boats, "more properly within the category of local fishermen and not members of a crew."⁷⁴ In the instant case, as stipulated, the vessels frequently, though not customarily between ports, operate outside Louisiana, across the boundaries thereof, and in foreign countries, and employment thereon is indisputably maritime in nature, as expressly assumed by both of the lower courts.

(4)

The court below further erred in not holding the tax imposed by the Act unconstitutional when sought to be applied to petitioners' maritime employment, as a step in an unauthorized plan of state legislation.

Williams v. Standard Oil Co., 278 U. S. 235 (1928).

United States v. Butler, 297 U. S. 1 (1936).

Linder v. United States, 268 U. S. 5 (1925).

Hill v. Wallace, 259 U. S. 44 (1922).

Wherefore it is respectfully submitted that the petition for certiorari should be granted.

R. EMMETT KERRIGAN,
JAMES J. MORRISON,
Attorneys for Petitioners.

DEUTSCH, KERRIGAN STILES,
RYAN, CONDON & LIVINGSTON,
Of Counsel.

⁷⁴*Shore Fishery, Inc. v. Board of Review*, 127 N. J. L. 87, 21 Atl. (2d) 634 (1941) at p. 637.

APPENDIX**RELEVANT PROVISIONS****LOUISIANA UNEMPLOYMENT COMPENSATION
ACTS****APPENDIX A***Act 164 of 1938*

Section 1. Declaration of State Public Policy. As a guide to the interpretation and application of this Act, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state. Unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, for the compulsory setting aside of unemployment reserves to be used for the benefit of unemployed persons.

Section 6. Contributions.

(a) Payment.

(1) On and after January 1, 1936, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this Act, with respect to wages payable for employment occurring during such calendar year. Such contributions shall become due and be paid by each employer to the Commissioner for the fund in accordance with such regulations as the Commissioner may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

(b) *Rate of Contribution.* Each employer shall pay contribution equal to the following percentages of wages payable by him with respect to employment:

(1) Nine-tenths of one per centum with respect to employment during the calendar year 1936, and such contributions shall be retroactive to January 1, 1936, and shall accrue and become payable from employers with respect to wages for employment occurring on and after January 1, 1936;

(2) One and eight-tenths per centum with respect to employment during the calendar year 1937;

(3) Two and seven-tenths per centum with respect to employment after December 31, 1937, except as otherwise prescribed in subsection (c) of this section.

(c) *Future Rates Based on Benefit Experience.*

(1) The Commissioner shall maintain a separate account for each employer, and shall credit his account with all the contributions paid on

his own behalf. Nothing in this Act shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged, in the amount hereinafter provided, against the accounts of his most recent employers in the inverse chronological order in which the employment of such individual occurred. The maximum amount so charged against the account of any employer shall not exceed one-sixth of the wages payable to such individual by each such employer for employment which occurs on and after the first day of such individual's base period, and shall not be more than \$78.00 per completed calendar quarter or portion thereof, which occurs on and after the first day of such individual's base period, but nothing in this section shall be construed to limit benefits payable pursuant to Section 2 of this Act. The Commissioner shall by general rules prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment at the same time.

- (3) The Commissioner shall, for the six months' period beginning July 1, 1941, and for each calendar year thereafter, classify employers, industries, and/or occupations with respect to the unemployment hazard in each. Each classification shall be made as of a date, hereinafter referred to as the computation date, which for the six months' period beginning July 1, 1941, shall be January 1, 1941 and for the year 1942 and each calendar year thereafter, shall be July 1 of the preceding year. In making such classifications, the Commissioner shall take ac-

count of the degree of unemployment hazard and of any other measurable factors which he finds bear a reasonable relation to the purposes of this subsection. He may apply such form of classification or rating system which in his judgment is best calculated to rate most equitably the employment risk for each employer or group of employers and to encourage the stabilization of employment. The general basis of classification proposed to be used for any period shall be subject to fair notice, opportunity for hearing, and publication. The rates for any period shall be so fixed that they would, if applied to all employers and their annual payrolls of the period of twelve consecutive months preceding the most recent computation date, have yielded total contributions equaling approximately 2.7 per centum of the total of all such annual pay rolls. The Commissioner shall determine the contribution rate applicable to each employer for the six months' period beginning July 1, 1941, or for any year thereafter, subject to the following limitations:

- (i) Each employer's rate shall be 2.7 per centum, unless and until, throughout the three years preceding the most recent computation date, any individual in his employ could have received benefits if eligible.
 - (ii) No employer's contribution rate shall be less than one per centum, nor more than a maximum of 3.6 per centum.
- (4) As used in this section the term "annual pay roll" means the total amount of wages payable by an employer (regardless of the time of payment) for employment during a consecutive twelve-month period.

(d) Contribution by Workers.

- (1) Each worker shall contribute to the fund one-half of one per centum of his wages paid by an employer with respect to his employment which occurs after December 31, 1936, and after such employer has satisfied the conditions set forth in Section 18 (f) or Section 7 (c) of this Act with respect to becoming an employer. Each employer shall be liable for the payment of his workers' contributions and shall, notwithstanding any provisions of law in this State to the contrary, withhold in trust the amount of his workers' contributions from their wages at the time such wages are paid, provided he shall show such deduction on his pay roll records, and shall furnish such evidence thereof to his workers as the Commissioner may prescribe. Each employer shall transmit all such contributions, in addition to his own contributions, to the Commissioner in such manner and at such times as the Commissioner may prescribe. If any employer fails to deduct the contributions of any of his workers at the time wages are paid for the next succeeding pay roll period, he alone shall therefore be liable for such contributions, and for the purposes of Section 13 hereof, such contributions shall be treated as employer's contributions required from him. As used in this Act, except when the context clearly requires otherwise, the term "contributions" shall include the contributions of workers pursuant to this section.
- (4) Contributions by workers, payable to the Commissioner as herein provided, shall be exempt from garnishment, attachment, execution, or any other remedy for the collection of debts.

Section 10.¹ Administration.

- (a) *Duties and Powers of Commissioner.* It shall be the duty of the Commissioner to administer this Act; and he shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this Act, which Commissioner shall prescribe. The Commissioner shall determine his own organization and methods of procedure in accordance with the provisions of this Act and shall have an official seal which shall be judicially noticed.
- (b) *Regulations and General and Special Rules.* General and Special rules may be adopted, amended, or rescinded by the Commissioner only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the Commissioner and shall become effective in the manner and at time prescribed by the Commissioner.
- (f) *Employment Stabilization.* The Commissioner with the advice and aid of advisory councils, and

¹So far as relevant here, the only change made by Act 10 of 1940, amending this section, was to change the word "Commissioner" to "Administrator".

through the appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, parishes, drainage and school districts, and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the re-employment of unemployed workers through the State in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

- (g) *Records and Reports.* Each employing unit shall keep true and accurate records, containing such information as the Commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the Commissioner or his authorized representatives at any time and as often as may be necessary. The Commissioner or authorized representative may require from any employing unit any sworn or unsworn reports which he deems necessary for the effective administration of this Act. Any member of the Board of Review, and any appeal tribunal referee may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which he deems necessary for the effective administration of this Act. Information thus obtained, or obtained from any individual pursuant to the administration of this Act, except to the extent necessary for the proper administration of this Act, shall be held confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the individual's or employing unit's identity, but any

claimant (or his duly authorized representative) at a hearing before an appeal tribunal or the Board of Review shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any employee or member of the Board of Review or any employee of the Commissioner who violates any provision of this section shall be fined not less than \$20.00 nor more than \$200.00, or be imprisoned for not longer than ninety days, or both.

- (h) *Oaths and Witnesses.* In the discharge of the duties imposed by this Act, the Commissioner, any appeal tribunal referee, the members of the Board of Review and any duly authorized representative of any of them shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the administration of this Act. Subpoenas issued pursuant to this subsection may be served by any person duly authorized by the Commissioner for such purpose.
- (i) *Subpoenas.* In case of contumacy by, or refusal to obey a subpoena issued to any person, upon application by the Commissioner, the Board of Review, any appeal tribunal referee, or any duly authorized representative of any of them, any court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commissioner, the Board of Review, an appeal tribunal referee or any duly authorized represen-

tative of any of them, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpoena of the Commissioner, the Board of Review, an appeal tribunal referee, or any duly authorized representative of any of them, shall be punished by a fine of not less than \$200.00 or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

- (j) *Protection Against Self-Incrimination.* No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Commissioner, the Board of Review, an appeal tribunal referee, or any duly authorized representative of any of them, or in obedience to the subpoena of any of them in any cause or proceeding before the Commissioner, the Board of Review, or an appeal tribunal referee, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution

and punishment for perjury committed in so testifying.

- (k) *State-Federal Corporation.* In the administration of this Act, the Commissioner shall cooperate to the fullest extent consistent with the provisions of this Act, with the Social Security Board, created by the Social Security Act, approved August 14, 1935, as amended; shall make such reports, in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the Social Security Board governing the expenditures of such sums as may be allotted and paid to this State under Title III of the Social Security Act for the purpose of assisting in the administration of this Act.

Upon request therefor the Commissioner shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this Act.

Section 15. Penalties.

- (a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this Act, either for himself or for any other person, shall be punished by a fine of not less than \$20 nor more than \$50, or by imprisonment for not longer than thirty days, or by both such fine and imprisonment; and each

false statement or representation or failure to disclose a material fact shall constitute a separate offense.

- (b) Any employing unit or any officer or representative or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this Act or who refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.
- (c) Any person who shall knowingly violate any provision of this Act or any order, rule, or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this Act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not longer than sixty days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

- (d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this Act while any conditions for the receipt of benefits imposed by this Act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the Commissioner, either be liable to have such sum deducted from any future benefits payable to him under this Act or shall be liable to repay to the Commissioner for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in Section 13 (b) of this Act for the collection of past-due contributions.

Section 18. Definitions: As used in this Act, unless the context clearly requires otherwise—

- (g) (1) "Employment", subject to the other provisions of this subsection, means service, including service in interstate commerce, performed for wages or under any contract for services, written or oral, express or implied.

(6) The term "employment" shall not include—

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States customarily operating between ports in this State and ports outside this State;

APPENDIX P

ACT 11 of 1940

Section 6. Contributions.

(a) *Payment.*

- (1) On and after January 1, 1936, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this Act with respect to wages for employment. Such contributions shall become due and be paid by each employer to the Administrator for the fund in accordance with such regulations as the Administrator may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

(b) *Rate and Place of Contributions.*

- (1) Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment;
 - (i) Nine-tenths of one per centum with respect to employment during the calendar year 1936, and such contributions shall be retroactive to January 1, 1936 and shall accrue and become payable from employers with respect to wages for employment occurring on and after January 1, 1936.
 - (ii) One and eight-tenths per centum with respect to employment occurring during the calendar year 1937;
 - (iii) Two and seven-tenths per centum with respect to employment occurring during the calendar years 1938 and 1939 and during the first two calendar quarters of the calendar year 1940.

- (2) Each employer shall pay contributions equal to two and seven-tenths per centum of wages paid by him during the last two calendar quarters of 1940, and during each calendar year thereafter, with respect to employment occurring after July 1, 1940.
- (c) *Study of Experience Rating.* The Administrator shall investigate and study the operation of this Act and actual experience hereunder with a view to determining the feasibility of establishing a rating system which would equitably rate the unemployment risk and fix the contributions to the fund of each employer and would encourage the stabilization of employment. The Administrator shall submit his report and recommendations to the Governor and the Legislature.

Section 15. Penalties.

- (a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, either for himself or for any other person shall be punished by a fine of not less than \$20 nor more than \$50, or by imprisonment for not less than ten days nor longer than thirty days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.
- (b) Any employing unit or any officer or representative or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment or benefits to any individual entitled thereto, or to avoid becoming or remaining

subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this Act or who refuses to make any such contribution or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records required hereunder, shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not less than ten days nor longer than sixty days, or by both fine and imprisonment in the discretion of the judge; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

- (c) Any person who shall knowingly violate any provision of this Act or any order, rule, or regulation thereunder, the violation of which is made unlawful of the observance of which is required under the terms of this Act, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment, for not less than ten days nor longer than sixty days, or by both such fine and imprisonment in the discretion of the judge, and each day such violation continues shall be deemed to be a separate offense.
- (d) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this Act while any conditions for the receipt of benefits imposed by this Act were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the Administrator,

either be liable to have such sum deducted from any future benefits payable to him under this Act or shall be liable to repay to the Administrator for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided, in Section 13 (b) of this Act for the collection of past-due contributions.

